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July 15, 2005

VIA HAND DELIVERY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
The Portals II
445 - 12th Street, S.W.
Room TW-A325
Washington, D.C. 20554

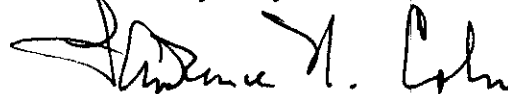
Dear Ms. Dortch

On behalf of Journal Broadcast Corporation, there are herewith submitted an original and four (4) copies of the following pleadings in connection with MB Docket No. 02-376 (RM-10617) (Amendment of Section 73.202(b), FM Table of Allotments, FM Broadcast Stations (Sells, Arizona)):

Motion for Leave to File Supplement to Opposition; and
Supplement to Opposition.

Please direct any communications regarding the enclosures to the undersigned counsel.

Yours very truly



Lawrence N. Cohn

Enclosures

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JUL 15 2005

Federal Communications Commission
Office of Secretary

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BEFORE THE

Federal Communications Commission

In the matter of)

Amendment of Section 73.202(b))

Table of Allotments,)

FM Broadcast Stations)

(Sells, Arizona))

MB Docket No. 02-376

RM-10617

RECEIVED

To: Office of Secretary
Attn: Chief, Audio Division
Media Bureau

JUL 15 2005

Federal Communications Commission
Office of Secretary

Motion for Leave to File Supplement to Opposition

Journal Broadcast Corporation ("Journal"), by its counsel, hereby moves for leave to file a Supplement to its Opposition¹ to the Petition for Reconsideration ("Petition") filed by Lakeshore Media, LLC ("Lakeshore") with regard to Report and Order, DA 04-3514 (Media Bureau, rel. November 22, 2004). Journal's Supplement to Opposition² is intended to bring to the Commission's attention in the context of this proceeding a substantive change in the facts as set forth and relied on by Lakeshore in its Petition. In support, Journal states the following:

In its Petition (paragraph 17), Lakeshore argued that the substitution of Channel 285C3 for Channel 285C2 at Willcox, Arizona, and the reallocation of Channel 285C3 from Willcox to Davis-Monthan Air Force Base, Arizona (and the modification of Station KWCX-FM's license accordingly) would not create a new "white" area because, among other reasons, the area in question would be served by the proposal of Cochise Broadcasting LLC ("Cochise"), the high

¹ Journal filed its Opposition on March 23, 2005.

² Journal is concurrently submitting its Supplement to Opposition.

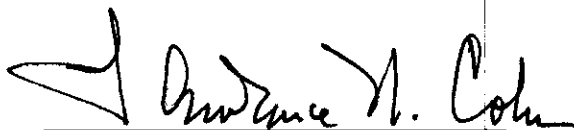
bidder in Auction #37 for a new FM station on Channel 279 at Lordsburg, New Mexico (BNPH-20041201CAN).

However, on June 9, 2005, Cochise filed a new FCC Form 301 application for FM Channel 279C1 at Lordsburg (BNPH-20050609ABD). The facility currently proposed by Cochise is materially different from the facility proposed by Cochise in BNPH-20041201CAN. As Lakeshore specifically relied in its Petition upon the service which was proposed by Cochise in its initial application, and as Journal responded in its Opposition to the argument advanced by Lakeshore based on the initial Cochise proposal (Id., paragraphs 8-9), and as that proposal has recently been replaced by a materially different proposal, Journal seeks leave to submit a Supplement to its Opposition to bring the relevant new facts regarding the new Cochise proposal to the Commission's attention in the context of this proceeding, and to present its views regarding the significance of the new facts.

For the foregoing reasons, Journal submits that the public interest would be served by granting Journal leave to file a Supplement to its Opposition (submitted concurrently).

Respectfully submitted

Journal Broadcast Corporation

A handwritten signature in black ink, appearing to read "Lawrence N. Cohn", is written over a horizontal line.

By: Joseph M. Di Scipio
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Telephone: (202) 452-4817

Its Counsel

Date: July 15, 2005

CERTIFICATE OF SERVICE

I, Brenda Chapman, hereby certify that on this 15th day of July, 2005, a copy of the foregoing "Motion for Leave to File Supplement to Opposition" was delivered via first class, U.S. mail, postage prepaid, or via hand delivery where indicated, to the following:

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Brenda Chapman

* Via Hand Delivery

BEFORE THE

In the matter of

Amendment of Section 73.202(b)

FM Broadcast Stations

MB Docket No. 02-376

RM-10617

To: Office of Secretary

Attn: Chief, Audio Division

Media Bureau

RECEIVED

JUL 15 2005

Supplement to Opposition

Federal Communications Commission
Office of Secretary

Journal Broadcast Corporation (“Journal”), by its counsel, hereby submits this Supplement to the Opposition¹ which it filed with regard to Lakeshore Media, LLC’s (“Lakeshore”) Petition for Reconsideration (“Petition”) of Report and Order, DA 04-3514 (Media Bureau, rel. November 22, 2004) (“Report and Order”).² In further support of its position that the decision in the Report and Order was correct and should be affirmed, Journal states the following:

The Media Bureau concluded that the adoption of Lakeshore's counterproposal³ would create substantial "white" area (2,142 square kilometers, containing a population of 2,846).⁴ Report and Order, Paragraph 8. In its Petition, Lakeshore contended that its counterproposal

¹ Journal's Opposition to Petition for Reconsideration ("Opposition") was filed on March 23, 2005.

² Journal is concurrently filing a Motion for Leave to File Supplement to Opposition.

3 Lakeshore's counterproposal would substitute Channel 285C3 for Channel 285C2 at Willcox, Arizona, reallocate Channel 285C3 from Willcox to Davis-Monahan Air Force Base, Arizona, and modify the license of Station KWCX-FM (currently operating on Channel 285C2 at Willcox) accordingly.

4 The Media Bureau also concluded that Lakeshore's counterproposal would create a significant area (1,068 square kilometers, containing a population of 1,022) which would have only one reception service. *Id.*

would not create any white area because, among other reasons, the area in question would receive service from the facility proposed in the application of Cochise Broadcasting LLC ("Cochise"), the successful bidder in FM Auction #37 for a new station on Channel 279 at Lordsburg, New Mexico (BNPH-20041201CAN). Petition, paragraph 17.⁵

In its Opposition, Journal noted several deficiencies in the Cochise application. Id. paragraph 9, and Engineering Statement of Roy D. Stype (executed March 23, 2005). Further, Journal argued that the raison d'être of the Commission's policy decision in Pacific Broadcasting of Missouri, LLC, 18 FCC Rcd 2291 (2003), recon. den., 19 FCC Rcd 10,950 (2000) ("Refugio"), which precludes consideration of service proposed in rule making proceedings as "back fill" replacement for communities which would otherwise lose their only local (transmission) service, applies with equal (if not greater) force to Lakeshore's counterproposal, which attempts to rely on service proposed to avoid the creation of substantial white area (reception) service. Opposition, paragraphs 5 and 8.

This Supplement is filed to bring to the Commission's attention the fact that Cochise has revised its initial application proposal and has recently filed a new Form 301 application for its station on Channel 279 at Lordsburg (BNPH-20050609ABD). This recent filing is significant in two ways with regard to Lakeshore's attempted reliance on the service proposed by Cochise. First, the proposal in the new Cochise application is entirely different from the proposal in the initial application relied upon by Lakeshore. Cochise's initial application proposed operation on Channel 279C from a tower located approximately 84 kilometers west of Lordsburg. The new

⁵ Similarly, Lakeshore argued that no white area would be created because of the service which was proposed in the amended application of Station KCDQ(FM), Tombstone, Arizona (BPH-20010525AAX). See Petition, paragraph 16. In addition, Lakeshore argued that no white area would be created because of the service which would result from the allotment of Channels 245C2 and 283C2 to Willcox, Arizona, which Lakeshore proposed in its counterproposal. The Media Bureau expressly rejected this argument. See, Report and Order, Paragraph 7.

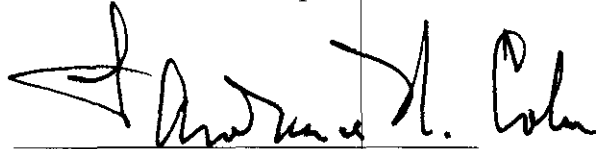
Cochise application proposes operation on Channel 279C1 (with minimum facilities) from a tower located approximately 3 kilometers east of Lordsburg—i.e., approximately 80 kilometers from the initially proposed site. See Supplemental Engineering Statement of Roy D. Stype (executed July 12, 2005). As Mr. Stype explains, the parameters of the current Cochise proposal are such that it would not provide 60 dBu service to any of the white area which would be created by the implementation of Lakeshore's counterproposal to modify the facilities of Station KWCX-FM. Id., page 2.

Second, and even more importantly, Cochise's recent filing demonstrates the wisdom of the Commission's Refugio policy that only "the initiation of broadcast operations" (Refugio, 19 FCC Rcd at 10,956)--and not allocations proposed in rule making proceedings--will be considered in determining whether a proposal would leave a community without local service, and why that basic policy should also be applied in the present context, in which Lakeshore attempts to rely on the Cochise application proposal to avoid the creation of a substantial white area. Indeed, the recent substantive change in Cochise's application proposal is a perfect "real time" demonstration of the inescapable fact that all application proposals are inherently tentative and contingent, and hence the Commission can have no confidence whatsoever that such proposals will in fact ever come into existence and serve as backfill to an area which would otherwise become a white area. Of course, this reasoning also applies, with full force, to Lakeshore's attempted reliance on the facilities proposed by Station KCDQ(FM), Tombstone, Arizona (BPH-20010525AAX) as backfill for the white area which Lakeshore's counterproposal would otherwise create. See Petition, paragraph 16.

For the foregoing reasons, and for the reasons set forth in the Report and Order, Journal submits that the Commission should deny Lakeshore's Petition for Reconsideration.

Respectfully submitted

Journal Broadcast Corporation

A handwritten signature in black ink, appearing to read "Lawrence N. Cohn", is written over a horizontal line.

By: Joseph M. Di Scipio
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Its Counsel

Date: July 15, 2005

**SUPPLEMENTAL ENGINEERING STATEMENT
IN SUPPORT OF OPPOSITION TO
PETITION FOR RECONSIDERATION
MM DOCKET 02-376**

**Journal Broadcast Corporation
Tucson, AZ**

July 12, 2005

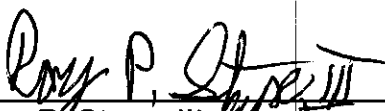
CARL E. SMITH CONSULTING ENGINEERS

ENGINEERING AFFIDAVIT

State of Ohio)
) ss:
County of Summit)


Roy P. Stype, III, being duly sworn, deposes and states that he is a graduate Electrical Engineer, a qualified and experienced Communications Consulting Engineer whose works are a matter of record with the Federal Communications Commission and that he is a member of the Firm of "Carl E. Smith Consulting Engineers" located at 2324 North Cleveland-Massillon Road in the Township of Bath, County of Summit, State of Ohio, and that the Firm has been retained by the Journal Broadcast Corporation to prepare the attached "Supplemental Engineering Statement In Support of Opposition To Petition For Reconsideration - MM Docket 02-376."

The deponent states that the Exhibit was prepared by him or under his direction and is true of his own knowledge, except as to statements made on information and belief and as to such statements, he believes them to be true.



Roy P. Stype, III

Subscribed and sworn to before me on **July 12, 2005**.



Notary Public

/SEAL/

NANCY A. ADAMS, Notary Public
Residence - Cuyahoga County
State Wide Jurisdiction, Ohio
My Commission Expires Sept. 5, 2006

ENGINEERING STATEMENT

This engineering statement is prepared on behalf of the Journal Broadcast Corporation ("Journal"), licensee of several radio stations in the Tucson, Arizona area. It supports a supplement to Journal's March 23, 2005 Opposition to the *Petition for Reconsideration* ("the KWCX-FM petition") filed in MB Docket 02-376 by the licensee of Radio Station KWCX-FM, Willcox, Arizona. KWCX-FM presently operates on Channel 285C2. It filed a counterproposal in this rulemaking proceeding proposing to substitute Channel 285C3 at Davis-Monthan Air Force Base, Arizona for Channel 285C2 in Willcox, Arizona and modify the license for KWCX-FM to specify operation on Channel 285C3 at Davis-Monthan Air Force Base. The *Report and Order* in this proceeding denied this counterproposal because the proposed reallocation would create new "white area" and the two new "backfill" allocations proposed in the KWCX-FM counterproposal were deemed not to be an acceptable replacement for the existing service from KWCX-FM, which provides the only full time aural service to the new "white area" which would have been created by the proposed reallocation.

One of the "changed circumstances" cited in the KWCX-FM petition was the filing of a "long form" construction permit application¹ (BNPH-20041201CAN) by Cochise Broadcasting, LLC, the winning bidder in Auction 37 for Channel 279C3 in Lordsburg, New Mexico, which the KWCX-FM petition claimed would provide service to the new "white area" which would be created by the proposed KWCX-FM reallocation.² On June

¹As originally filed, the Lordsburg "long form" application proposed a "one step" upgrade to Channel 279C from a site located 83.8 kilometers (52.1 miles) west of Lordsburg.

²In addition to noting that the Lordsburg "long form" application was only a pending application which had not been granted, Journal's opposition noted that there appeared to be several issues with this application which could prevent it from being granted in its present form.

9, 2005, Cochise Broadcasting, LLC filed a new "long form" application for Channel 279 in Lordsburg.³ This new (or amended) application specifies operation on Channel 279C1 in Lordsburg with minimal Class C1 facilities (51 kilowatts effective radiated power at 61 meters above average terrain) from a site located 80.7 kilometers east of the originally proposed site (approximately 3 kilometers west of Lordsburg). The facilities proposed in this new (or amended) application will not provide 60 dBu service to any portion of the "white area" which would be created by the proposed KWCX-FM reallocation.

Accordingly, there can be no reliance on the service proposed by Cochise for Lordsburg. There can be no reliance on the proposal in the "long-form" application, as originally filed, because this proposal has been withdrawn. There can be no reliance on the proposal in the new application because it would not provide replacement service to any part of the "white area" which would be created by the proposed KWCX-FM reallocation.

³Although this application was assigned a new file number (BNPH-20050609ABD), it appears likely that this new "long form" application is actually intended to be an amendment to the original "long form" application (BNPH-20041201CAN) for Channel 279 in Lordsburg.

CERTIFICATE OF SERVICE

I, Brenda Chapman, hereby certify that on this 15th day of July, 2005, a copy of the foregoing "Supplement to Opposition" was delivered via first class, U.S. mail, postage prepaid, or via hand delivery where indicated, to the following:

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